<u>**REMARKS/ARGUMENTS**</u>

Claims 1-14 are pending in the present application. Claims 1-3, 9, and 12 were canceled; claims 4, 5, 7, 10, 13, and 14 were amended; and no claims were added. Reconsideration of the claims is respectfully requested.

Claims 1-3, 9, and 12 were cancelled in order to expedite prosecution.

Applicants would like to thank Examiners Herring and Barron for participating in a teleconference on May 15, 2006. During the teleconference, the Examiners explained their position on the rejection of claims 9-11 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter, in that the definition of computer usable medium in the specification includes transmission media. The Examiners explained that they felt transmission media was not statutory and advised either editing the claims to exclude transmission media or remove transmission media from the specification. Additionally, the Examiners were asked whether claims 6, 7, 8, and 14 were allowed. None of these claims were specifically rejected or objected to; but, they were also not listed as being allowed in the Present Office Action. The Examiners stated that while it appeared that the claims were not covered by the prior art further consideration and a search may be required.

I. <u>**35 U.S.C. § 101: Claims 9-11**</u>

The Examiner has rejected claims 9-11 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

The Examiner has rejected claims 9-11 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. The Examiner asserts that claims 9-11 encompass transmission media, which is not limited to tangible embodiments and therefore not statutory. No basis is present for holding a computer usable medium claim non-statutory because the medium may be allegedly "intangible." As stated in MPEP 2106 (IV)(B)(1):

> In this context, "functional descriptive material" consists of **data structures** and computer programs **which impart functionality when employed as a computer component.** (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.
> **When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.** Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and

Warmerdam, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure *per se* held nonstatutory). **(emphasis added)**

The present invention as recited in claims 9-11 is clearly functional descriptive material since it imparts functionality when employed as a computer component. Moreover, the functional descriptive material of claims 9-11 is recorded on "some" computer- usable medium.

In the above context, the term "some" means "any" computer-useable medium. The MPEP does not draw any distinctions between one type of media that is considered to be statutory and another type of media that is considered to be non-statutory. To the contrary, the MPEP clearly states that as long as the functional descriptive material is in "some" computer-useable medium, it should be considered statutory. The only exceptions to this are functional descriptive material that does not generate a useful, concrete and tangible result, e.g., functional descriptive material composed completely of pure mathematical concepts that provide no practical result. The present invention as recited in claims 9-11 clearly provides a useful, concrete and tangible result in that certain items are combined, subjected to a process and a new item, a password, is created. This is not just some disembodied mathematical concept or abstract idea.

Thus, claims 9-11 are directed to functional descriptive material that provides a useful, concrete and tangible result, and which is embodied on "some" computer-useable medium. Therefore, the present invention recited in claims 9-11 is statutory and the rejection of the claims under 35 U.S.C. § 101 has been overcome.

II. 35 U.S.C. § 102, Anticipation: Claims 1-5, 9-10, and 12-13

The Examiner has rejected claims 1-5, 9-10, and 12-13 under 35 U.S.C. § 102 as being anticipated by **Abadi** et al., System and Method for Generating Unique Passwords, U.S. Patent No. 6,141,760, October 31, 2000 (hereinafter "**Abadi**"). This rejection is respectfully traversed.

Claims 1-3, 9, and 12 were cancelled. Claims 4, 5, 10, and 13 were amended to depend from allowable claims. Therefore, the rejection of claims 1-5, 9-10, and 12-13 under 35 U.S.C. § 102 has been overcome.
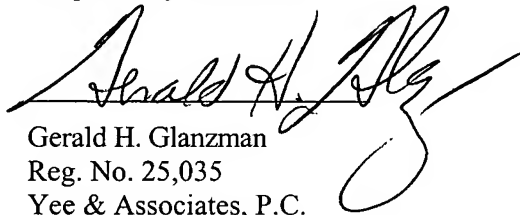
III.   <u>Conclusion</u>

It is respectfully urged that the subject application is patentable over **Abadi** and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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